

July 24, 2003

IN RE: DOCKET NO. 2002-367-C

**COPY OF DIRECT TESTIMONY OF JAYNE EVE FILED ON BEHALF  
OF ALLTEL SOUTH CAROLINA, INC. HAS BEEN DISTRIBUTED TO  
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July 23, 2003

Mr. Gary Walsh  
Executive Director  
Public Service Commission  
State of South Carolina  
101 Executive Center Drive, Saluda Building  
Columbia, South Carolina 29210



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Re: Direct Testimony of Jayne Eve on Behalf of Alltel South Carolina, Inc.  
Docket No. 2002-367-C

Dear Gary:

Enclosed please find an original and 25 copies of the above-referenced pre-filed testimony for filing. Please do not hesitate to contact me with any questions you may have.

Very truly yours,

Robert D. Coble

RDC/lwb

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STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION  
DOCKET NO. 2002-367-C

POSTED  
DW/23/03

2002

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IN RE: )  
 )  
Generic Proceeding to Address )  
Abuse of Market Position )  
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DIRECT TESTIMONY  
OF  
JAYNE EVE  
  
ON BEHALF OF  
  
ALLTEL South Carolina, INC.

S. C. PUBLIC SERVICE COMMISSION  
RECEIVED  
JUL 24 2003  
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UTILITIES DEPARTMENT

July 23, 2003

RETURN DATE: OK DW  
NOTE: OK DW

1 Q. Please state your name, business address and business  
2 position.

3 A. My name is Jayne Eve. My business address is 236 West  
4 Center Avenue, Mooresville, North Carolina. I am employed  
5 by ALLTEL South Carolina, Inc. ("ALLTEL") as Director -  
6 State Government Affairs.

7

8 Q. Please provide information on your educational and business  
9 background and experience.

10 A. I received a Bachelor of Science in Business Administration  
11 and Accounting from the University of South Carolina in  
12 1982. I am a Certified Public Accountant ("CPA") in the  
13 state of North Carolina and, from 1982 until 1986 I worked  
14 with a large CPA firm as an auditor. I have been employed  
15 by ALLTEL since 1986 and have held various positions in  
16 Access Billing, Settlements and Revenue Requirements,  
17 Special Projects, Industry Relations, Marketing and  
18 Interconnection Services, and State Government Affairs.

19

20 Q. What is the purpose of your testimony?

21 A. The purpose of my testimony is to provide comments on the  
22 proper definition of the term "abuse of market position" in  
23 order for the Public Service Commission ("Commission") to be  
24 able to determine what kinds of behavior constitute "abuse of  
25 market position" as contemplated by Section 58-9-576 of the  
26 Code of Laws of South Carolina annotated. Specifically,

1 paragraph (B)(5) of Section 58-9-576 states that a local  
2 exchange carrier (LEC) regulated pursuant this section "shall  
3 set rates for all other services<sup>1</sup> on a basis that does not  
4 unreasonably discriminate between similarly situated  
5 customers; provided, however, that all such rates are subject  
6 to a complaint process for abuse of market position in  
7 accordance with guidelines to be adopted by the commission".  
8

9 Q. Is the referenced statute relevant to the reason why this  
10 proceeding was initiated?

11 A. No. The Commission established this proceeding in response to  
12 a complaint filed by the Consumer Advocate against BellSouth  
13 Telecommunications, Inc. ("BellSouth"). The Consumer Advocate,  
14 in his complaint, claims that the price increases proposed by  
15 BellSouth represented an "abuse of market position". The  
16 Consumer Advocate alleges "there is a lack of competitive  
17 alternatives to control BellSouth's pricing behavior". The  
18 Consumer Advocate is incorrect when he claims a price increase  
19 constitutes an "abuse of market position". The term "abuse of  
20 market position" refers to anti-competitive behavior aimed at  
21 driving out competition. A price increase is not anti-  
22 competitive and cannot drive out competitors. In fact a price  
23 increase is likely to have the opposite effect and attract  
24 additional service providers to the marketplace.

---

<sup>1</sup> All services other than flat-rated local exchange residential and single-line business service.

1

2 Q. What is "abuse of market position"?

3 A. The term "abuse of market position" in the context of the  
4 applicable statute can be described as behavior by a provider  
5 to utilize predatory pricing to drive out competition. Pricing  
6 is predatory when a company prices its services below its  
7 incremental cost with the intent and effect of driving out  
8 competition.

9

10 More specifically, the Public Service Commission should  
11 acknowledge for purposes of this statute, 58-9-576, abuse of  
12 market position occurs when a service provider prices a  
13 service or bundle of services below the incremental costs for  
14 the respective service or bundle with the specific intent and  
15 effect of eliminating competition.

16

17 Q. Are prices of services for which an alternative or similar  
18 service exist protected from an "abuse of market position"?

19 A. Yes. A service provider is likely to be dissuaded from pricing  
20 a service or bundle, for which an alternative or similar  
21 service is offered by an alternate service provider, below its  
22 incremental cost by the requirements in Section 251 of the  
23 Telecommunications Act of 1996. Section 251 requires a service  
24 provider to resell any service or bundle it offers to its  
25 competitors at retail or wholesale prices. Section 251

1 provides the necessary checks and balances while allowing  
2 competitive pricing to occur.

3  
4 Q. The Public Service Commission Staff Witness Dr. Spearman, in  
5 his Testimony recommends that the terms "market position" and  
6 "market power" should be used interchangeably in this  
7 proceeding. Do you agree?

8 A. No. As Dr. James Spearman points out in his testimony the  
9 Department of Justice defines "market power to a seller as the  
10 ability to profitably maintain prices above competitive levels  
11 for a significant period of time". "Market position", on the  
12 other hand, is a concept of anti-trust law that describes a  
13 specific form of behavior involving predatory pricing. These  
14 terms have different meanings. Most importantly the applicable  
15 statute expressly proscribes "abuse of market position".  
16 Therefore, the Commission need not consider the term "market  
17 power" and focus on the term "market position".

18  
19 Q. In addition to the express use of only the term "abuse of  
20 market position" in the applicable statute, are there other  
21 reasons the PSC should not be concerned with "abuse of market  
22 power"?

23 A. Yes. Section 58-9-576(A) protects end users from the potential  
24 to "abuse market power". Specifically, subsection A states  
25 "Any LEC may elect to have rates, terms, and conditions  
26 determined pursuant to the plan described in subsection (B),

1 provided the commission has approved a local interconnection  
2 agreement in which the LEC is a participant with an entity  
3 determined by the commission not to be affiliated with the LEC  
4 or the commission determines that another provider's service  
5 competes with the LEC's basic local exchange telephone  
6 service". Such a provision requires the electing LEC to  
7 clearly establish that its end users do have a choice of  
8 purchasing their telecommunications services from a competing  
9 provider before it is allowed to have its rates, terms and  
10 conditions regulated pursuant to this statute. The  
11 availability of alternate service offerings diminishes the  
12 LEC's ability to influence rates for its services in the  
13 marketplace.

14  
15 A Company's efforts to exert market power and influence rates  
16 for its services in the marketplace will be limited if (1)  
17 consumers can switch to other products. For example a wireless  
18 carrier's competitive service and pricing limit the LEC's  
19 ability to increase the rates for its services; (2) consumers  
20 can purchase the same product from a different provider. For  
21 example the end users ability to purchase long distance  
22 service from interexchange carriers places limitations on the  
23 LEC's pricing of toll rates; (3) producers of other services  
24 cross-over to enter the marketplace. For example traditional  
25 long distance service providers have entered the local service  
26 market and are successfully bundling local service with long



1 distance service to offer a more attractive and competitive  
2 service; and (4) new producers enter the market. For example  
3 services over technologies such as Voice over Internet  
4 Protocol are likely to attract new service providers to the  
5 marketplace.

6  
7 **Q. What is an alternate service offering?**

8 **A.** An alternate service offering is a substitute to the services  
9 offered by the LEC in the marketplace. A substitute can be  
10 defined as either (1) the same or similar service offered by  
11 an alternate service provider or (2) a service that can be  
12 used to replace the service offered by the LEC. For example:  
13 (1) end users may purchase long distance service from the LEC  
14 or purchase the same or a similar service from an alternate  
15 provider such as a competitive interexchange carrier or  
16 wireless service provider or (2) an end user may replace  
17 his/her wireline service in its entirety with wireless service  
18 for a variety of reasons including price. Alternate service  
19 providers that currently operate in the telecommunications the  
20 marketplace include, but are not limited to, competitive local  
21 exchange providers, competitive interexchange carriers,  
22 competitive access providers, cable providers, cellular mobile  
23 radio service and Internet telephony providers.

24  
25 Most significantly, in today's telecommunications marketplace  
26 one would be hard pressed to find a telecommunications service

1 for which an alternate service offering is not be available  
2 now. Wireless service has emerged as a viable and accessible  
3 alternative to wireline service. The FCC's Eighth Annual CMRS  
4 Competition Report, issued June 14, 2003, found that 95  
5 percent of the total U.S. population lives in counties with  
6 three or more wireless service providers, and 83 percent live  
7 in counties with five or more wireless providers competing to  
8 offer service. The FCC's Report also found that while  
9 relatively few wireless customers have "cut the cord" in the  
10 sense of canceling their wireline service, there is growing  
11 evidence that consumers are substituting wireless service for  
12 traditional wireline communications. Further, according to the  
13 South Carolina Public Service Commission website more that 190  
14 competitive local exchange service providers have been granted  
15 certificates to provide telecommunications service in the  
16 state of South Carolina. The telecommunications marketplace is  
17 likely to become even more competitive with more service  
18 providers entering the market place and the advent of new  
19 technology and innovations in the industry.

20  
21 **Q. How should the Commission define "abuse of market position"?**

22 **A.** The Commission should define "abuse of market position" as  
23 anti-competitive behavior that involves pricing of services  
24 below the incremental costs for the respective service or  
25 bundle with the intent and effect of eliminating competition.

1 Q. Does this conclude your testimony?

2 A. Yes.

3

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Direct Testimony of Jayne Eve on Behalf of Alltel South Carolina, Inc. has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 23rd day of July, 2003.

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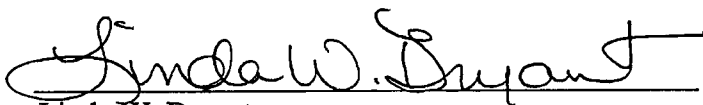
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